

FILED

07 APR 26 AM 8:31

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *PCL*

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH P. BECKER,

Petitioner,

vs.

R.J. HERNANDEZ, Warden,

Respondent.

Civil No. 07cv0576 JM (PCL)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner, a state prisoner, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner has also submitted a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) in which he claims that Richard J. Donovan State Prison officials have refused to provide him with the financial accounting required by 28 U.S.C. § 1915(a)(2).

MOTION TO PROCEED IN FORMA PAUPERIS.

Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a prisoner seeking leave to proceed *in forma pauperis* must submit a "certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the six-month period immediately preceding the filing of the petition." 28 U.S.C. § 1915(a)(2). From the certified trust account statement, the Court must assess whether the Petitioner is capable of paying the \$5.00 filing fee.

1 Because Petitioner has failed to submit a certified copy of his prison trust account
2 statement for the six-month period immediately preceding the filing of his petition per 28 U.S.C.
3 § 1915(a)(2) and Southern District of California Local Rule 3.2, and Richard J. Donovan State
4 Prison officials have allegedly refused to provide Petitioner with a trust account certificate
5 required by 28 U.S.C. § 1915(a)(2), the Court is unable to determine whether Petitioner is
6 capable of paying the \$5.00 filing fee. Accordingly, Petitioner's motion to proceed *in forma*
7 *pauperis* [Docket No. 2] must be **DENIED** without prejudice and his petition must be
8 **DISMISSED** without prejudice. However, the Court will order that this Order be served on the
9 Warden of Richard J. Donovan State Prison and that trust account officials at Richard J.
10 Donovan State Prison fulfil their statutory duty to provide Petitioner a copy of his trust account
11 statement upon request.

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

CONCLUSION

Based on the foregoing, it is hereby **ORDERED**:

(1) Petitioner's motion to proceed *in forma pauperis* [Docket No. 2] is **DENIED** without prejudice and the petition is **DISMISSED** without prejudice.

(2) Petitioner is **GRANTED** sixty (60) days leave from the date this Order is stamped "Filed" to either: (a) pay the entire \$5 filing fee; or (b) submit the attached supplemental "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*" and a certified copy of his trust account statement for the six-month period preceding the filing of his petition pursuant to 28 U.S.C. § 1915(a)(2) and Southern District of California Local Rule 3.2(b).

(3) Upon Petitioner's request, trust account officials at Richard J. Donovan State Prison are hereby directed to fulfill their statutory obligation to provide him with a certified copy of his trust account statement for the six-month period immediately preceding the filing of his petition. See 28 U.S.C. § 1915(a)(2).

(4) The Clerk of the Court is directed to attach a blank Motion to Proceed *In Forma Pauperis* form to this Order.

(5) The Clerk of the Court is further directed to serve a copy of this Order upon R.J. Hernandez, Warden, Richard J. Donovan State Prison at Rock Mountain, 480 Alta Road, San Diego, California 92179.

IT IS SO ORDERED.

DATED: 4/25/07


JEFFREY T. MILLER

United States District Judge